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2 UNITED STATES BANKRUPTCY COURT

3 | SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481-rdd

6 | In the Matter of:

7

8 DPH HOLDINGS CORP., ET AL.,

9

10 Debtors.

11

13 | Page

14 | United States Bankrupt

15 | 300 Quarropas Street

16

18 | November 17, 2011

18 8:10 AM

30

3.1 B E E Q B E :

33 HON ROBERT D BRAIN

23 U. S. BANKRUPTCY JUDGE

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2 **HEARING re Notices of Agendas**

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25 **Transcribed by: Avigayil Roth**

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Page 6

1 P R O C E E D I N G S

2 THE CLERK: All rise.

3 THE COURT: Please be seated. Good morning. In re
4 DPH Holdings?

5 MR. LYONS: Good morning, Your Honor. John Lyons,
6 Skadden Arps on behalf of the reorganized debtors. And I have
7 my colleague, Brandon Duncomb here with me in court. I believe
8 Mr. Hogan and Carl Tullson from my office is also on the line.

9 THE COURT: Okay.

10 MR. LYONS: Today, Your Honor, we have the fiftieth
11 claims hearing, as well as the twenty-second (sic) omnibus
12 hearing. With Your Honor's permission I'll deal with the
13 fiftieth claims hearing, since there are no contested matters
14 and really just a point of notice, Your Honor.

15 THE COURT: Okay. That's fine.

16 MR. LYONS: The first item on the agenda is the Ohio
17 Bureau of Workers' Compensation matter. Your Honor, we are
18 continuing to work with the State of Ohio and to resolve that
19 claim. We have been exchanging information with them. It
20 does -- it requires analysis under actuarial standards, so it's
21 a fairly complicated matter. But we are working with them, and
22 we have deferred -- or adjourned that hearing to February 16th.

23 THE COURT: Okay.

24 MR. LYONS: The next matter, item number 2, Calsonic
25 Kansei North America, that has been resolved pursuant to a

Page 7

1 joint stipulation at docket 21705.

2 THE COURT: Right. And I think I approved that last
3 week.

4 MR. LYONS: Correct. Okay. On to the seventy-second
5 omnibus hearing. The first matter is a motion by the
6 reorganized debtors to enforce plan injunction against Oldco
7 trustee. That matter is expected to be resolved and has been
8 adjourned to the next omnibus hearing pursuant to the agreement
9 of the parties.

10 THE COURT: Okay. So --

11 MR. LYONS: Second --

12 THE COURT: -- you're well on the way to resolving
13 that one, then?

14 MR. LYONS: Yes, Your Honor.

15 THE COURT: Okay.

16 MR. LYONS: That's my understanding.

17 THE COURT: All right. Okay.

18 MR. LYONS: The second item is the motion by the
19 reorganized debtors to enforce judgment against Charles Tebele.
20 That is also expected to be resolved -- and I believe, actually
21 that is resolved, but I don't have the e-mail in front of me.
22 But in any event, it has been adjourned to the next omnibus
23 hearing until they can get a stipulation or a decree order to
24 Your Honor.

25 THE COURT: Okay.

Page 8

1 MR. LYONS: Item number 3, the motion by reorganized
2 debtors to approve settlement with the United States. I have
3 my colleague, Carl Tullson, on the line who, with Your Honor's
4 permission, will take you through that motion.

5 THE COURT: Okay. That's fine.

6 MR. TULLSON: Good morning, Your Honor. Carl Tullson
7 from Skadden Arps on behalf of the reorganized debtors.

8 THE COURT: Good morning.

9 MR. TULLSON: As my colleague, John, mentioned, the
10 next item on the agenda is our motion to approve a settlement
11 between the reorganized debtors and the United States on behalf
12 of the EPA. The settlement agreement is part of a proposed
13 global settlement between Delphi Automotive LLP or new Delphi,
14 General Motors Company, the reorganized debtors and the United
15 States. The resolved claim is currently pending in the United
16 States district court for the southern district of New York.
17 And the action is styled Delphi Corporation, et al. v. United
18 States of America, number 08-CIV-4487, and that's referred to
19 as the Delphi FICA case in our papers.

20 THE COURT: And in fact this settlement before me is
21 conditioned upon that settlement becoming an actual settlement
22 that's been approved by the court, right?

23 MR. TULLSON: That's correct, Your Honor.

24 THE COURT: The district court.

25 MR. TULLSON: Yeah.

1 THE COURT: Okay.

2 MR. TULLSON: Yes. And --

3 THE COURT: What is the status of that? Has that been
4 agreed to yet, or is it pending before the district court?
5 What's the status of it?

6 MR. TULLSON: It is pending before the district court.
7 The parties are finalizing an offer letter that resolves the
8 terms of the entire settlement.

9 THE COURT: Okay.

10 MR. TULLSON: And I believe Joseph Cordaro from the
11 United States Attorney's Office is in court today, and he can
12 probably give you further updates from his perspective on the
13 status of the global settlement.

14 THE COURT: Okay.

15 MR. TULLSON: And that case seeks a refund of
16 approximately twenty-six million dollars related to overpayment
17 of employment taxes related to lump-sum payments that were made
18 to unionized employees on the effective dates of two collective
19 bargaining agreements entered into in 1998 and in 2003. And as
20 part of that settlement agreement -- or FICA settlement, the
21 portion before this Court at this hearing provides that the
22 United States was in allowed pre-petition environmental claim,
23 proof of claim number 14309, in the amount of \$857,582.52
24 against DPH-LLC. Rather than receiving a normal distribution
25 under the modified plan, the settlement agreement provides that

Page 10

1 the United States shall apply the allowed claim, 14309, with
2 the reorganized debtors' agreement, as a setoff against the
3 FICA refund settlement amount to be paid to the reorganized
4 debtors.

5 Your Honor, as a side note I would like to mention
6 that the FICA settlement proceeds were acquired by the buyers
7 under the master disposition agreement that this Court approved
8 in connection with the plan modification order, entered in July
9 of 2009. And for that reason, satisfying the allowed claim
10 pursuant to a setoff against the FICA settlement proceeds is
11 not giving away any value that would otherwise go to other
12 admin claimants or general unsecured creditors.

13 Your Honor, the Department of Justice filed its
14 statement in support --

15 THE COURT: Can I interrupt you for a second?

16 MR. TULLSON: Sure.

17 THE COURT: Do those parties need to sign off on the
18 FICA settlement?

19 MR. TULLSON: Yes. And as I did mention earlier, the
20 settlement is a settlement between new Delphi --

21 THE COURT: Okay.

22 MR. TULLSON: -- General Motors Company --

23 THE COURT: All right.

24 MR. TULLSON: -- the reorganized --

25 THE COURT: So they're fully up to speed on this?

Page 11

1 MR. TULLSON: Yes.

2 THE COURT: All right.

3 MR. TULLSON: Yes. And the Department of Justice
4 filed its statement in support of our motion on Tuesday, at
5 docket number 21722.

6 THE COURT: Right.

7 MR. TULLSON: Unless --

8 THE COURT: And as I understand it, that ends the
9 United States' ability to pull out of this settlement unless,
10 of course, the FICA settlement doesn't go through, right?

11 MR. TULLSON: That's correct.

12 THE COURT: Okay.

13 MR. TULLSON: Yeah. So unless you have further
14 questions for the reorganized debtors, I'll turn things over to
15 Joe Cordaro from the United States Attorney's Office so they
16 can address their filing, as well the comments they received in
17 response to the publication of the terms of the settlement
18 agreement before this Court and the Federal Register.

19 THE COURT: All right. Well, I did have one question
20 for both of you. As I read this motion and the proposed order,
21 this motion is a little different than the normal settlement
22 motion in that you're asking me to approve the settlement as a
23 whole, as opposed to just whether the settlement's in the best
24 interest of the debtors. Am I right about that?

25 MR. TULLSON: That's correct.

Page 12

1 THE COURT: Okay. All right. But I guess I can rely
2 in large measure on the EPA's views of the settlement and the
3 comment process as far as approving it from the government's
4 perspective. That's just an observation, not a question.

5 MR. CORDARO: Good morning, Your Honor. Joseph
6 Cordaro, assistant United States attorney, on behalf of the
7 United States.

8 THE COURT: Good morning.

9 MR. CORDARO: To respond to the Court's question to
10 Mr. Tullson on the status of the FICA matter, the matter is
11 pending before Judge Etkin of the district court. It has been
12 stayed to allow the parties to engage in the global settlement
13 negotiations and hopefully bring them to fruition. Inasmuch as
14 the FICA tax settlement itself is concerned, that's subject to
15 the approval of the associate attorney general. And we haven't
16 reached that stage yet, so I didn't want the Court to perceive
17 that perhaps the settlement agreement itself was before the
18 district court --

19 THE COURT: Right.

20 MR. CORDARO: We haven't reached that stage yet.

21 THE COURT: Okay. The agreement contemplates this
22 setoff though, right? As I remember interagency setoffs,
23 there's a process that -- one agency itself just can't do it.
24 You need to have a process where there's a broader approval
25 within the government. But I take it that what the parties are

Page 13

1 talking about by way of a settlement of the FICA action
2 contemplates this setoff.

3 MR. CORDARO: Yes, Your Honor.

4 THE COURT: Okay.

5 MR. CORDARO: In fact, they're mutually contingent.

6 THE COURT: All right. Okay.

7 MR. CORDARO: Your Honor, the United States supports
8 the reorganized debtors' motion to approve the settlement
9 agreement. The United States has made a determination under
10 environmental law that the agreement is fair, reasonable, in
11 the public interest and furthers the goals of CERCLA. It was
12 the product of arm's-length negotiation over many months
13 involving not only the reorganized debtors and the United
14 States, but also as the Court alluded to, the new Delphi
15 attorneys and GM as well. The parties took into account
16 arguments concerning liability and defenses to liability, the
17 risks of further litigation and the need for clean-up at the
18 sites.

19 In addition, the agreement serves CERCLA's goal of
20 reducing litigation and transaction costs associated with
21 response actions, as well as the public policy favoring
22 settlement. The United States published a notice of the
23 agreement in the Federal Register in order to give the public
24 an opportunity to provide comments. We did receive one
25 comment: it was from Ballard Spahr LLP on behalf of several

Page 14

1 companies who have conducted response actions at the Tremont
2 site.

3 I spoke to the attorney from Ballard Spahr after the
4 United States submitted its statement in support of the
5 agreement -- that was Mr. Glenn Harris. Mr. Harris indicated
6 that the thrust of the comment was a concern that even if both
7 settlements became affective and even if the United States
8 affected the setoff as contemplated in the agreement, that
9 somehow the money would not find its way to the EPA.

10 THE COURT: Because it was a setoff as opposed to
11 actual cash. I think that -- I mean, reading between the lines
12 I guess that was their concern.

13 MR. CORDARO: I think that was the concern, Your
14 Honor. And as I explained to Mr. Harris, the agreement makes
15 clear that the United States shall apply the allowed amount as
16 a setoff against any refund owed to the debtor. That would be
17 a distribution under paragraph 1 of the agreement. That the
18 agreement also specifically provides that the monies
19 contemplated therein will be allocated to the specific
20 superfund sites, and that EPA will deposit monies received into
21 special site accounts for those particular sites.

22 I also note that the agreement was signed by the EPA
23 as well as the Department of Justice, and that the comment
24 itself really does not address the fairness of the agreement.

25 THE COURT: So, in essence, the government would be

Page 15

1 keeping the roughly 850,000 dollars, and that actual cash will
2 be going into this special account?

3 MR. CORDARO: That's correct, Your Honor.

4 THE COURT: Okay.

5 MR. CORDARO: And accordingly, we believe that the
6 clear language of the agreement addresses the comment's
7 concern. And unless the Court has any further questions, we
8 would respectfully request that the Court enter the proposed
9 order.

10 THE COURT: Okay. No, I don't have any other
11 questions. I think the United States' response made it clear.
12 I'm not sure they had to allocate the money the way they did,
13 but having done so I think that they've -- that the United
14 States has addressed the comment adequately.

15 And as far as the settlement itself is concerned from
16 DPH Holdings' perspective, it's clearly fair and reasonable.
17 It was noticed to, in particular, the NewCo entity, which is
18 really the only party from the debtors' side that might have an
19 objection to it since in affect they would be funding it, and
20 they have no objection.

21 From the perspective of the United States I agree with
22 the Justice Department's filing, which sets forth the reasons
23 why the settlement is appropriate. And based on the public
24 comment -- or actually, lack thereof, except for the one
25 comment which I think is clearly resolved by the government's

Page 16

1 response. In addition it's clear that the settlement is fair
2 as a whole, so I'll approve the settlement. Obviously it's
3 conditioned upon the other events taking place ultimately
4 leading to court approval of the FICA settlement. And this is
5 of no force or affect if that settlement never goes through,
6 but in the meantime you can e-mail the order to chambers and
7 it'll be entered.

8 MR. CORDARO: Thank you, Your Honor.

9 THE COURT: Okay.

10 MR. LYONS: Okay. Your Honor, the final item on the
11 agenda is the amended motion filed by Mr. James Grai to lift
12 the stay, and that's at docket 20682 (sic) -- I'm sorry, 21682.

13 Your Honor, this whole matter began, if you may
14 recall, by a letter that Mr. Grai sent to chambers. We sent an
15 e-mail in response to Your Honor giving you an update on the
16 status of the appeal to the Second Circuit. And since then the
17 parties have filed numerous pleadings and motions to outline
18 some of the issues.

19 Your Honor, we have had several discussions with the
20 parties to the matter, including Mr. Grai, and that's Michael
21 Doud, who's here in court, the Ace defendants, and also I've
22 had some conversations with Mr. Raterink on behalf of the
23 Michigan defendants.

24 THE COURT: And Mr. Raterink, you're on the phone,
25 right?

Page 17

1 MR. RATERINK: That is correct, Your Honor.

2 THE COURT: Okay. Good morning.

3 MR. RATERINK: Good morning.

4 MR. LYONS: And, Your Honor, I think all the parties
5 agree -- I won't go into the pleadings, because I assume Your
6 Honor is up to speed and read them. But I think all the
7 parties agree that if there is an insurance issue that is at
8 issue in these individual claims, that those matters have to
9 remain here with Your Honor pending the Second Circuit's
10 ruling. And then assuming a favorable ruling, then that would
11 be brought to Your Honor's -- on your court's calendar, and
12 would be adjudicated in due course.

13 However, the parties have identified a number of
14 claims of the 205 claims that Mr. Doud represents that have
15 nothing to do with the insurance issue. And so the parties are
16 working together -- we have different numbers and different
17 lists, and I actually have in court here today Mr. Mark
18 Fraylick who's in the back of the courtroom, who is the DPH
19 Workers' Compensation administrator.

20 But what we would suggest, Your Honor, is that we
21 adjourn this matter to the next hearing in December. And the
22 parties would work together on a joint stipulation that would
23 in essence list the claims that are not subject to this
24 insurance issue. For example, there are claims that GM is
25 currently administering and paying under the MOU --

Page 18

1 THE COURT: Right. You list three categories in your
2 response, which to me seemed the right categories --

3 MR. LYONS: Right.

4 THE COURT: -- for those claims that would not
5 implicate the Ace Insurance issue.

6 MR. LYONS: Right. So we were going to work together
7 with the parties because some of the lists just aren't matching
8 right now, but I'm confident that once we exchange lists and
9 dig into the individual claims we'll be able to come up with a
10 consensual list. I mean, obviously the primary concern that
11 DPH has and I think I can also indicate the Ace defendants
12 have, is that this insurance issue is reserved for this Court,
13 and that nothing goes on in the adjudication of any of these
14 claims that would possibly touch upon that issue.

15 THE COURT: Right. I agree with that. I mean, I
16 think that this is probably less an issue of the automatic stay
17 than the stay pending appeal that I entered, although the plan
18 injunction was implicated as part of that.

19 MR. LYONS: Correct.

20 THE COURT: And hopefully we'll get -- I mean, as I
21 understand from the pleadings, the Second Circuit heard oral
22 argument on October 5th on that issue. So I'm assuming we'll
23 get a ruling from the Second Circuit probably before the end of
24 this year that clarifies whether, in fact, I will keep
25 jurisdiction over that adversary proceeding or whether the

Page 19

1 insurance coverage issue will go back to Michigan.

2 On the other hand, no matter where it is, on the
3 ultimate issue it's clear to me from the Michigan defendants'
4 response that the Michigan defendants are not going to make any
5 payments -- unless directed to do so by some court -- until the
6 insurance issue is resolved. So if it goes back -- if the
7 Second Circuit rules contrary to Judge Marrero and me, that it
8 should go back to Michigan, there will still be a delay as far
9 as I can see, unless I'm missing something, on the Workers'
10 Compensation claims that are not free of that insurance issue.

11 MR. RATERINK: This is Dennis Raterink, Your Honor. I
12 think that's correct. The ultimate issue still has to be
13 determined, whether it be by yourself and this court or whether
14 the issues are ultimately returned back to the Michigan
15 administrative tribunals.

16 THE COURT: Right. I mean, the only thing -- I'm
17 sorry to interrupt you. The only thing I would say on that is
18 this may not be the first time there's been a dispute as to
19 whether there is no ability to pay anymore on the employer's
20 side. And I don't know whether there's some doctrine that says
21 that Michigan should pay pending resolution of that dispute if
22 there are deep pockets. But that's not really been brought
23 before me at this point. And so that's not really implicating
24 in anything I'm ruling on today.

25 MR. RATERINK: To be honest, Your Honor, I just kind

Page 20

1 of tie it into the idea that we've raised in the pleadings,
2 that this is an issue of first impression. That you had this
3 combination of both self-insurance and insurance coverage with
4 the same entity.

5 THE COURT: Yeah. This --

6 MR. RATERINK: And therefore it's a unique situation.

7 THE COURT: This particular situation, that the 404
8 and the self-insured with the insurers may be, in fact, sui
9 generis. But it's hard for me to believe that there haven't
10 been disputes in the past as to whether there was an ability to
11 pay or not. But again, this is probably neither here nor there
12 as far as -- well, it's definitely neither here nor there as
13 far as what's in front of me.

14 It's just I think that the issue before me is whether
15 there should be -- whether the claimants -- the former
16 employees' actions will implicate the injunction I issued
17 earlier this year, or the plan injunction. And that would mean
18 implicating the Ace Insurance issues. If there's some
19 mechanism for them to force payment absent a determination of
20 those issues, then I don't think that the injunction applies
21 and my stay order doesn't apply.

22 And that's implicit in what counsel for the debtors
23 has been saying, and I think also voiding (ph.) Ace's and the
24 Michigan defendants' responses they're saying, which is that we
25 should be able to agree on any number of claimants who are not

Page 21

1 covered by the injunctions because they're not raising claims
2 within the disputed period, they're not raising claims against
3 the debtor but rather against GM. And whether that's 61 people
4 or 107 or however, I mean, that's no problem. So, again, as
5 long as those insurance issues, which are the ones that are
6 covered by my injunctions are not implicated, then I would
7 assume that people can forward.

8 MR. RATERINK: And Your Honor --

9 MS. PRZEKOP-SHAW: Your Honor, Susan Przekop-Shaw --

10 THE COURT: Yes.

11 MS. PRZEKOP-SHAW: -- on behalf of the Michigan
12 Workers' Compensation agency.

13 THE COURT: Good morning.

14 MS. PRZEKOP-SHAW: I haven't had any opportunity to be
15 talking to Mr. Lyons about this case, and so in regards to his
16 representation that all the parties agree if insurance is an
17 issue those matters have to stay here for resolution, the
18 agency does not agree with that position. And it's for this
19 reason that we do not: the issue as to which insurance claims
20 or which parties should be before this Court we still maintain
21 should be done within the Michigan administrative process.

22 THE COURT: That's very clear. I mean, that's why
23 there's an appeal in the Second Circuit. But I think no one's
24 disputing that the stay pending appeal that I entered on
25 January 28th, 2010 would preclude litigation of the Michigan

Page 22

1 defendants' defense that there's an ability to pay in a
2 Workers' Comp action.

3 So clearly, in entering into a stipulated order, for
4 example, that however many claimants -- whether it's 61 or 107
5 or 150 or any other number -- are free to go ahead because
6 they're not covered by that injunction, obviously no party
7 would be waiving any rights in respect of the appeal or the
8 underlying litigation between --

9 MS. PRZEKOP-SHAW: But --

10 THE COURT: -- between Ace and the Michigan defendants
11 and DPH.

12 MS. PRZEKOP-SHAW: But that's the inherent problem
13 that we have here. Because I don't believe Mr. Doud is coming
14 to this Court to have him assert -- have the Court assert
15 jurisdiction on the resolution of his clients' claim. I think
16 that it's critical to recognize that indeed, even though Mr.
17 Doud may have listed 190 or 200 employees that had claims in
18 Michigan, those claims that don't relate to this issue have
19 been going forward. And there's no reason for this Court to
20 start deciding which claims can and cannot go forward in
21 Michigan.

22 THE COURT: Well, I agree --

23 MS. PRZEKOP-SHAW: And that's where I have a concern
24 where it's being suggested that a stipulation needs to be
25 agreed to by the parties as to which cases can go forward in

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1 Michigan. I think Mr. Doud, a very competent attorney, can
2 address these issues now that he has notice of what's going on.
3 And I feel that the agency really is not in a position to say
4 yes, this case can go and this case can't, because that's
5 within the jurisdiction of the magistrate before the Michigan
6 administrative hearing system. And it's not necessarily within
7 this court's jurisdiction.

8 And I don't want the agency to be in a situation where
9 its stipulation is basically infringing upon the magistrate's
10 authority that has always existed there. And so though I --
11 the agency appreciates Mr. Grai coming forward in this matter
12 because the agency has been pushing to have this administrative
13 issue brought back to Michigan, it's an issue of first
14 impression, it's a situation where Mr. Doud and Mr. Grai and
15 all the other movants must recognize that it's unique. And
16 that fact remains that Ace and Pacific have been filing the
17 Form 400s, and that has to have something -- some impact, some
18 ability for these people to have their Workers' Comp
19 obligations covered, aside from going to the funds or to going
20 to General Motors.

21 Michigan has insurance law, and Ace and Pacific have
22 come forward and they have operated in Michigan, and therefore
23 this issue has to be addressed -- especially dealing with one
24 insurance coverage. You yourself brought up an issue about
25 funding, Your Honor. And it remains that -- and it's been the

Page 24

1 position that the Fund is not a deep pocket to be paying --
2 making obligations and to pay them. And we believe that Mr.
3 Doud's clients have to recognize that potentially Ace and
4 Pacific will be responsible for paying their Workers' Comp
5 obligations, and will be ongoing responsibility.

6 So I appreciate Mr. Doud coming in and joining us and
7 advocating, in a sense, that this matter needs to go forward
8 because that's what the agency has rigorously maintained
9 throughout this process, but I'm concerned about Mr. Lyons
10 saying that we now need to stipulate as to which cases should
11 or should not cover. I think Mr. Doud is a plaintiff's
12 attorney, he's a competent -- a prominent Workers' Comp
13 plaintiff's attorney here in Michigan. He's been given a
14 number of pleadings, and before we start telling him where his
15 cases should go or his clients should be represented, I think
16 that's got to be Mr. Doud's input on this and --

17 THE COURT: He sought relief in this court.

18 MS. PRZEKOP-SHAW: I'm sorry?

19 THE COURT: He sought relief in this court. I don't
20 know w -- I mean --

21 MS. PRZEKOP-SHAW: But he sought relief to this court
22 because it can be relieved through the court in trying to
23 figure out exactly where the positions are, and I don't think
24 he's trying to suggest to the Court that the Court should take
25 over these cases -- I would hope not because, I mean, that's

Page 25

1 contrary to what Michigan law says. The administrative process
2 rests within corporate Michigan --

3 THE COURT: You know, I hate to quote Yogi Bera to
4 often --

5 MS. PRZEKOP-SHAW: Yeah.

6 THE COURT: -- every week, but this is deja vu all
7 over again.

8 MS. PRZEKOP-SHAW: Yes.

9 THE COURT: I've already ruled on this issue, the
10 district court's already ruled on this issue and it's pending
11 sub judice before the Second Circuit.

12 MS. PRZEKOP-SHAW: Exactly. And that's the point.

13 THE COURT: So there's no reason to reargue it. It's
14 just a waste of time.

15 MS. PRZEKOP-SHAW: And I'm not rearguing it, I'm
16 just --

17 THE COURT: I do agree with you on one point, but I'm
18 concerned by what you said and your desire to reargue this
19 issue. That you would think that if I enter an order saying
20 that it's up to Mr. Doud to decide whether the injunction is
21 violated or not, that the State of Michigan would think that
22 that would be leave to get around the order that was issued in
23 January of 2010 and the plan injunction.

24 MS. PRZEKOP-SHAW: But see, I don't think that's what
25 Mr. Doud wants. He doesn't want --

Page 26

1 THE COURT: No. It's what you want.

2 MS. PRZEKOP-SHAW: -- to violate

3 THE COURT: And I'm afraid that --

4 MS. PRZEKOP-SHAW: And nor did I say that, sir.

5 THE COURT: -- based upon your willingness to reargue
6 this issue that if I just simply said all of this is moot and
7 Mr. Doud can take his chances, that the State of Michigan would
8 take the view that that means that notwithstanding my ruling
9 and Judge Marrero's ruling and the fact that there's a matter
10 that's sub judice before the Second Circuit. And in the
11 meantime my January 28th, 2010 order granting a stay pending
12 appeal, that if Mr. Doud took not just the 107 matters to
13 litigation in Michigan but all of them, that the State of
14 Michigan would be free to issue its -- raise its defense of
15 payment.

16 MS. PRZEKOP-SHAW: Absolutely not.

17 THE COURT: Okay.

18 MS. PRZEKOP-SHAW: I mean, that's not the position I'm
19 taking here, sir.

20 THE COURT: All right.

21 MS. PRZEKOP-SHAW: I'm not trying to suggest to you to
22 enter an order that permits Mr. Doud to violate the injunction.
23 I'm concerned with the stipulation proposed by Mr. Lyons that
24 somehow the Court and the parties must decide which cases go
25 forward and which ones must be enjoined. That's the only

Page 27

1 concern I have, sir.

2 THE COURT: Well, I don't -- I mean, it would seem to
3 me that that was exactly the position that Michigan
4 supplemental response was taking.

5 MS. PRZEKOP-SHAW: Well, it was identified for
6 purposes of the motion.

7 THE COURT: Which is that we agree that 107 can go
8 forward.

9 MS. PRZEKOP-SHAW: There were two motions that were
10 filed; one, a motion to join. And Mr. Doud was bringing in a
11 number of the injured employees that we maintain weren't
12 subject to this Court's stay order and could have proceeded.
13 And we were arguing whether they should be joined to his
14 proceeding. That's the only part of the motion --

15 THE COURT: Well, there's no re -- no. I -- okay.
16 No. Obviously there's no reason for the Michigan claimants --
17 the former employees of Delphi to be part of this adversary
18 proceeding. I don't see a reason for that.

19 MS. PRZEKOP-SHAW: Okay.

20 THE COURT: I mean, if that's what you're saying, I
21 agree completely. I don't -- I just think that while the issue
22 has been joined there should be clarification of who clearly
23 can proceed through to a final order in Michigan with their
24 claims. Which I think the parties are all on board with.

25 MS. PRZEKOP-SHAW: Well --

Page 28

1 MR. LYONS: And Your Honor, just to follow up. I
2 mean, Mr. Doud should be applauded. He has clients, he wanted
3 clarification of Your Honor's orders. The stipulation is just
4 going to be in furtherance and in clarification of Your Honor's
5 stay order. Nothing more.

6 THE COURT: Right. And I don't mind setting a --
7 making it clear in that stipulation that anyone who falls into
8 these three categories that the debtors' response says are not
9 implicated -- including in respect of any conceivable defense
10 that the Michigan defendants would raise -- don't have to come
11 back to me to get an order.

12 MR. DOUD: Your Honor, Michael Doud. And thank you
13 for having me here.

14 THE COURT: Hi. You've been very patient.

15 Everybody's talking about what you should be doing or not
16 doing, but --

17 MR. DOUD: I appreciate the opportunity to talk.
18 Here's the big problem that we've been facing in Michigan. The
19 State of Michigan Workers' Compensation Agency has prohibited
20 these cases from going forward because of the stay.

21 THE COURT: Right.

22 MR. DOUD: Now they're coming in and saying these
23 cases have been going forward all along: that's not true.
24 Every time I go to court the State of Michigan is prohibiting
25 us from going forward and we're getting adjournments.

Page 29

1 THE COURT: Okay. Well --

2 MR. DOUD: That's why I'm here.

3 THE COURT: It seems to me that, again, to the extent
4 that the State of Michigan is going to argue as its defense to
5 the claim --

6 MR. DOUD: I understand.

7 THE COURT: -- that there's a source of payment other
8 than the State of Michigan, then they're right, it should be
9 stayed.

10 MR. DOUD: That part I agree with.

11 THE COURT: But in respect of anyone else, I don't
12 think that the January 2010 order or the plan injunction are
13 implicated. And we can have a specific order that identifies
14 specific clients of yours that fall into that category. And
15 I'm happy to enter an order that says that anyone else that
16 falls into that category doesn't have to seek relief from the
17 January 2010 order as long as that decretal paragraph also says
18 that the January 2010 order is, of course, in full force and
19 effect to the extent it applies to people who don't fall under
20 those categories.

21 MR. DOUD: Absolutely.

22 THE COURT: I'm happy to do that. And then no one has
23 to come back here again, that falls under that group.

24 MR. DOUD: Thank you, Your Honor.

25 THE COURT: Okay.

Page 30

1 MR. LYONS: And we will work with the parties to draft
2 an order that's very clear --

3 THE COURT: Okay.

4 MR. LYONS: -- and gives very clear guidance to
5 everyone.

6 THE COURT: And it should say that -- I mean, it's
7 implicit, and it's -- because this is what I said on the
8 record. That in agreeing to that order no one is waiving any
9 rights in respect to the underlying issue, including the
10 jurisdictional issues that Michigan has raised. Obviously
11 that'll be dealt with in the litigation that's on appeal right
12 now. So you should circulate that after you do your actuarial
13 work.

14 MR. LYONS: We will, Your Honor.

15 THE COURT: Okay. And -- not actuarial work, but
16 reviewing the records.

17 MR. LYONS: Yes. And again, Your Honor, we would
18 envision -- we would have DPH, the Ace defendants, Mr. Grai and
19 his fellow claimants, the Michigan agencies, as well as General
20 Motors to be parties to that stipulation.

21 THE COURT: Right.

22 MS. PRZEKOP-SHAW: How are we bringing General Motors
23 into this case?

24 MR. LYONS: To confirm that these are General Motors',
25 that they acknowledge the transfer of the Workers' Compensation

Page 31

1 liabilities.

2 MS. PRZEKOP-SHAW: I don't think that's -- then that's
3 a resolution. The Court would be taking the resolution of an
4 issue that is prevalent in Michigan, that General Motors may be
5 pursuing and saying certain cases aren't within their
6 jurisdiction. And I would voice an objection to be bringing
7 General Motors into this matter. If it's an issue where the
8 Court says these are the cases that's covered by my order,
9 that's something different than all of a sudden deciding okay,
10 General Motors, you have this coverage and whatever else. That
11 decision rests with Michigan's administrative system. And --

12 THE COURT: But this would -- this is just General
13 Motors saying we have taken on these matters.

14 MR. LYONS: Correct.

15 THE COURT: It's not --

16 MS. PRZEKOP-SHAW: They may have been filing an
17 appearance in those matters, but they aren't -- they're not
18 necessarily making --

19 THE COURT: No. No. They -- no. This would be them
20 agreeing that they have taken on the matters.

21 MS. PRZEKOP-SHAW: But why do we have General Motors
22 in here, Your Honor?

23 THE COURT: Because if General --

24 MS. PRZEKOP-SHAW: And why are we -- why are you
25 extending that jurisdiction now to General Motors to bring them

Page 32

1 in on this matter?

2 THE COURT: I'm not extending jurisdiction to anyone.

3 What -- as long as GM or anybody -- Joe down the street or

4 Chrysler -- has agreed that they will pay for this, then --

5 MS. PRZEKOP-SHAW: But they haven't agreed to pay for
6 it, that's my point, Your Honor.

7 THE COURT: No. But the premise of this --

8 MS. PRZEKOP-SHAW: Why would you require them to start
9 saying something that we're on the risk for this liability when
10 that may be a question to them --

11 THE COURT: It's not --

12 MS. PRZEKOP-SHAW: -- and may be a subject of the
13 Court and -- I mean, the administrative proceedings? I don't
14 understand that part, Your Honor.

15 THE COURT: Well, I think --

16 MS. PRZEKOP-SHAW: Why can't we just keep it with the
17 parties, is what I'm suggesting we --

18 THE COURT: I think you're missing one point. This is
19 a stipulation so they would be agreeing to this. I'm not
20 deciding a contested matter, whether they've taken it on or
21 not. This would be their agreement that they have assumed the
22 liability. And it's -- if they have assumed the liability then
23 the insurance issues aren't implicated because GM's assumed the
24 liability. It's only in those cases that they have agreed.

25 MR. LYONS: And, Your Honor --

Page 33

1 THE COURT: There would be a category. There are
2 three categories here: one, claims that do not implicate the
3 reorganized debtors at all; two, claims that have been assumed
4 by General Motors Company -- and by assumed I mean where both
5 GM and the debtors acknowledge that they've been assumed. I'm
6 not going to determine whether GM has assumed it if GM says
7 they haven't, but if they have assumed it then there's no
8 reason not to let the -- then the injunction's not implicated;
9 and then finally claims that fall outside of the dates of
10 coverage that are implicated in the insurance dispute that's
11 the subject of the injunction.

12 So it's those three categories that clearly don't
13 implicate the insurance litigation.

14 MS. PRZEKOP-SHAW: There's really only two categories
15 that don't implicate your stay. The ones that fall in within
16 the time period that Ace and Pacific filed their notices of
17 insurance coverage are impacted by the stay. The second one is
18 all others. And I'm just concerned that the Court now is
19 asking General Motors okay, come in and make a decision on
20 this. You're going to be placing them in a situa -- and that's
21 their own choice, I recognize that, Your Honor.

22 THE COURT: Right. It's their own choice.

23 MS. PRZEKOP-SHAW: But I think that the categories are
24 limited to two, and two only.

25 MR. DOUD: Your Honor, there is a memorandum of

Page 34

1 understanding between General Motors and Delphi as to --

2 THE COURT: Right. Absolutely.

3 MR. LYONS: Pursuant to the plan.

4 MR. DOUD: -- as to which plants they have taken over
5 responsibility of.

6 THE COURT: Right. I have -- I mean, look, these are
7 real people out there. They need to get their Workers'
8 Compensation. If GM agrees that it has assumed the liability,
9 there's no reason why this should be enjoined: they should go
10 ahead and pay it.

11 MS. PRZEKOP-SHAW: And I don't disagree with that.

12 We've been pushing to have this resolved --

13 THE COURT: No, you haven't. Now, please, this is
14 just -- I'm sorry. My ruling is clear on this. This is a
15 perfectly reasonable provision on this. And if there's no
16 issue and if GM is prepared to assume it then these people
17 should be free to go and get it. There's no --

18 MS. PRZEKOP-SHAW: No doubt.

19 THE COURT: The insurance issue isn't implicated at
20 all.

21 MS. PRZEKOP-SHAW: And, Your Honor, I understand your
22 ruling. I'm just suggesting that these people will be having
23 their benefits paid without necessarily a bankruptcy court
24 telling them to make those payments. And I'm just suggesting
25 to limit and isolate what is really the true cases before it,

Page 35

1 so all the rest of them can go.

2 THE COURT: As I understand it, there are people who
3 are currently filing claims in Michigan who would be covered by
4 the GM memorandum of understanding where GM has assumed full
5 responsibility for paying these claims, and nevertheless those
6 claims are being stayed because of Delphi. That shouldn't
7 happen.

8 MR. RATERINK: Your Honor?

9 THE COURT: And we should have the clarity so that
10 there's no issue of that happening. Now, maybe it's just belt
11 and suspenders, but to the extent even one person is clearly
12 covered by a GM assumption, that person shouldn't be deprived
13 of getting their Workers' Compensation -- at least by my order,
14 because my order wouldn't apply to that person.

15 MR. RATERINK: Your Honor, Dennis Raterink again. I
16 just, for clarity's sake and nothing else at this point, I want
17 to make it very clear. Mr. Doud indicated that the Workers'
18 Comp agency was prohibiting cases from proceeding; the only
19 thing that has been happening was the Fund's attorneys has been
20 clear with your directive and the stay order.

21 THE COURT: Right.

22 MR. RATERINK: That we've been appearing in the cases
23 that the FASF (ph.) is implicated in and requesting
24 adjournments, nothing else.

25 THE COURT: That's fine. And now this will be clear

Page 36

1 to the hearing officer, that he or she doesn't need to adjourn
2 as to these entities -- these people.

3 MR. RATERINK: Yeah. And I'm going to suggest that GM
4 is paying and litigating these cases every day --

5 THE COURT: Okay.

6 MR. RATERINK: -- in Michigan administrative
7 tribunals. It's going forward.

8 THE COURT: All right. And that's great. I'm happy
9 with that. And to the extent we can make that crystal clear, I
10 have no problem with that.

11 MR. RATERINK: Okay. Just wanted to make sure you
12 didn't have a misunderstanding about what was happening in
13 Michigan.

14 THE COURT: I just --

15 MR. RATERINK: Because these cases are being
16 litigated.

17 THE COURT: Okay.

18 MR. DOUD: Your Honor, that's not true.

19 THE COURT: Well, I don't want to get into it.

20 MR. DOUD: No. They're --

21 THE COURT: As far as I'm concerned --

22 MR. DOUD: Okay.

23 THE COURT: -- this order will make it clear that if
24 anyone falls under those three categories --

25 MR. DOUD: I appreciate that.

Page 37

1 THE COURT: -- that Michigan doesn't need to ask for
2 an adjournment as to those three categories.

3 MR. DOUD: I don't want them to mislead you as to why
4 I'm here though, Your Honor.

5 THE COURT: Okay.

6 MR. DOUD: I represent these people. These are my
7 files. These cases are not going forward, and the State of
8 Michigan's prohibiting it.

9 THE COURT: All right.

10 MR. DOUD: And I appreciate that.

11 THE COURT: Well, okay. I'm not going to decide that
12 issue.

13 MR. DOUD: I understand.

14 THE COURT: All I'm going to say is those three
15 categories can go forward, we can have them memorialized in an
16 order, we can --

17 MR. DOUD: Thank you.

18 THE COURT: It should be memorialized with respect to
19 specific people. It can also have a provision that says
20 generically anyone that falls under these categories can go
21 forward, provided that the insurance issues will not be raised.

22 MR. DOUD: Thank you.

23 THE COURT: Okay.

24 MR. LYONS: Your Honor, we'll get right on it, and I'm
25 sure Mr. Fraylick will be all over this, as well.

Page 38

1 THE COURT: Okay. All right.

2 MR. DOUD: Thank you, Your Honor.

3 MR. LYONS: Thank you, Your Honor.

4 THE COURT: And I don't think this was the intent, but
5 I guess we should have an order saying this. There's no reason
6 to grant the motion to intervene in the adversary proceeding.
7 I don't know if you want to withdraw that motion or if I should
8 just -- I mean, I think what you really wanted to do was join
9 to Mr. Grai's motion, all of these other people.

10 MR. DOUD: Correct.

11 THE COURT: So you could either file something
12 withdrawing the motion to intervene in the adversary proceeding
13 or to join in the adversary proceeding. I'm not sure that
14 really was the intention of the motion, as opposed to just
15 joining these people to the lift-stay motion.

16 MR. DOUD: That's correct.

17 THE COURT: All right. So maybe you can withdraw
18 that, or else you can just do an order saying that to the
19 extent relief was sought to intervene in the adversary
20 proceeding, that's denied.

21 MR. LYONS: We'll wrap that all up in the stip.

22 THE COURT: Okay.

23 MR. LYONS: Thank you, Your Honor.

24 MR. DOUD: Thank you, Your Honor.

25 THE COURT: All right. Thanks.

Page 39

1 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

2 THE COURT: Okay. Thank you. And thank you for
3 accommodating me with starting an hour early today. I had
4 thought because of some other matters that were adjourned that
5 we would go longer today and need more time, because I had an
6 afternoon matter. But anyway, thank you.

7 IN UNISON: Thank you, Your Honor.

8 (Whereupon these proceedings were concluded at 9:53 AM)

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Page 40

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4 RULINGS

| | | Page | Line |
|----|--|------|------|
| 6 | Debtors' Settlement with United States of | 16 | 2 |
| 7 | America, Approved | | |
| 8 | | | |
| 9 | Michigan Claimants' Motion to Intervene in | 38 | 20 |
| 10 | Adversary Proceeding, Denied | | |
| 11 | | | |
| 12 | | | |
| 13 | | | |
| 14 | | | |
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Page 41

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2 C E R T I F I C A T I O N

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4 I, Avigayil Roth, certify that the foregoing transcript is a
5 true and accurate record of the proceedings.

6

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8 **Avigayil Roth**

Digitally signed by Avigayil Roth
DN: cn=Avigayil Roth,
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17 Date: November 21, 2011

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